

IN THE COURT OF APPEALS OF IOWA

No. 0-026 / 09-0404

Filed May 12, 2010

LINDA NELSON,
Plaintiff-Appellant,

vs.

RITA CASE,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchinson,
Judge.

Linda Nelson appeals from the district court order dismissing her unjust
enrichment claim against Rita Case. **REVERSED AND REMANDED.**

Gavin Quill, Student Attorney, and Sally Frank, Supervising Attorney,
Drake Legal Clinic, Des Moines, for appellant.

Thomas Fisher, Jr., of Parrish Law Firm, Des Moines, for appellee.

Heard by Vogel, P.J., Eisenhauer, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

EISENHAUER, J.

Linda Nelson appeals from the district court order dismissing her unjust enrichment claim against Rita Case. She contends the court erred in concluding she failed to state a claim upon which relief can be granted. We reverse.

I. Backgrounds Facts and Proceedings. Linda Nelson and Jesse Case were married in 1991. The decree dissolving their marriage was entered on December 21, 2005. The decree states in pertinent part:

[Linda] shall further be entitled to \$10,000.00 of [Jesse]'s IPERS benefits. That sum represents the amount settled upon between both parties of [Jesse]'s IPERS benefits resulting from contributions during the course of the marriage. [Linda] shall present a Qualified Domestic Relations Order to the Court to effectuate this division within thirty working days after this decree is entered.

A QDRO was entered the same day. It provided as follows:

IPERS is directed to pay benefits to [Linda Nelson] as a marital property settlement under the following formula: \$10,000 of [Jesse Case]'s gross lump sum payment at the time of distribution if paid as a lump sum benefit, or \$200 of [Jesse Case]'s gross monthly payment at the time of distribution if paid as a monthly allowance.

Jesse Case died on March 21, 2008. At the time, he was married to Rita Case and had not yet begun to receive his IPERS benefits. Upon his death, IPERS paid Rita Case all the funds in Jesse Case's IPERS account.

On November 25, 2008, Linda Nelson filed a petition in equity alleging Rita Case was unjustly enriched by receiving all of Jesse Case's IPERS funds.¹ On December 23, 2008, Rita Case filed a motion to dismiss, claiming Linda

¹ Although the petition alleges IPERS erroneously interpreted the QDRO in making payment to Rita, Linda withdrew that allegation at the hearing.

Nelson failed to state a claim upon which relief could be granted. Linda Nelson resisted, and following a February 13, 2009 hearing, the district court granted the motion.

II. Scope and Standard of Review. A ruling on a motion to dismiss is reviewed for the correction of errors at law. *U.S. Bank v. Barbour*, 770 N.W.2d 350, 353 (Iowa 2009). We will affirm a dismissal only if the petition shows no right of recovery under any state of facts. *Reiff v. Evans*, 630 N.W.2d 278, 284 (Iowa 2001). The district court's decision to grant a motion to dismiss is proper only when the petition, "on its face shows no right of recovery under any state of facts." *Id.*

We review the petition in the light most favorable to the petitioner. *Id.* We must accept as true the allegations in the petition. *Id.* All doubts and ambiguities are to be resolved in the claimant's favor. *Holsapple v. McGrath*, 521 N.W.2d 711, 712 (Iowa 1994). We look to the pleadings to determine if they were so deficient that the opposing party was deprived of notice of the claims made. *Haupt v. Miller*, 514 N.W.2d 905, 909 (Iowa 1994).

III. Analysis. A motion to dismiss is generally based on the claim that the pleader has failed to state a claim upon which any relief may be granted. Iowa R. Civ. P. 1.421(1)(f). The thrust of the motion to dismiss is directed at the pleadings and, consequently, facts outside the pleadings will not generally be considered. *Troester v. Sisters of Mercy Health Corp.*, 328 N.W.2d 308, 310 (Iowa 1982). A motion to dismiss a petition should only be granted if there is no state of facts conceivable under which a plaintiff might show a right of recovery.

Smith v. Smith, 513 N.W.2d 728, 730 (Iowa 1994). If the viability of a claim is at all debatable, it should not be sustained. *Southard v. Visa U.S.A. Inc.*, 734 N.W.2d 192, 194 (Iowa 2007).

Nearly every case will survive a motion to dismiss under notice pleading. *Barbour*, 770 N.W.2d at 353. A petition need not allege ultimate facts that support each element of the cause of action. *Id.* at 354. Rather, it must contain factual allegations that give the defendant “fair notice” of the claim asserted so the defendant may adequately respond to the petition. *Id.* The “fair notice” requirement is met if a petition informs the defendant of the incident giving rise to the claim and of the claim’s general nature. *Id.*

Linda Nelson contends the court erred in dismissing her petition because she properly stated a claim for unjust enrichment. Recovery based on unjust enrichment can be distilled into three basic elements of recovery: (1) the defendant was enriched by the receipt of a benefit; (2) the enrichment was at the expense of the plaintiff; and (3) it is unjust to allow the defendant to retain the benefit under the circumstances. *State v. Unisys Corp.*, 637 N.W.2d 142, 154-55 (Iowa 2001).

The district court granted the motion to dismiss on the basis that Linda Nelson cannot satisfy the second and third elements of an unjust enrichment claim:

Rita Case received no benefit at the expense of Linda [Nelson] because she received only death benefits from IPERS. The QDRO provided for no death benefits for Linda [Nelson]. The QDRO was prepared by the attorneys for Linda [Nelson] to effectuate the terms of the dissolution decree. If IPERS did not misinterpret the QDRO, as it clearly did not, and the QDRO effectuated the terms of the

decree, then the only logical conclusion is that Rita Case received no benefit at the expense of Linda [Nelson]. Furthermore, plaintiff cannot make a case that it is unjust that Rita Case received the death benefits from IPERS to which Linda [Nelson] has no claim.

Linda Nelson argues the district court's ruling was in error because it assumed Rita Case received death benefits. Even though the QDRO does not mention death benefits the dissolution decree refers to IPERS benefits. The petition states, "IPERS distributed all funds in Decedent's IPERS account to Defendant." She argues the court's ruling goes beyond the facts pled.

Facts not alleged cannot be relied on to aid a motion to dismiss nor may evidence be taken to support it. *Reiff*, 630 N.W.2d at 284. Accepting the facts alleged in the petition as true, we conclude Linda Nelson has stated a claim upon which relief can be granted. She stated:

18. Defendant was enriched by the receipt of funds distributed from Decedent's IPERS account prior to the satisfaction of the \$10,000 equitable lien placed on the account in the Decree of Dissolution of Marriage and QDRO.

19. Decedent's failure to satisfy judgment of the decree was to the detriment of the Plaintiff.

20. It is unjust to allow defendant to retain the benefit under the circumstances.

21. No remedy at law is available to the defendant.

Whether the benefits Rita Case received were IPERS benefits subject to the terms of the dissolution decree and whether Linda Nelson is entitled to part of them are questions of fact directed toward the merits of the lawsuit and not appropriately addressed in a motion to dismiss. As our supreme court said in *Cutler v. Klass, Whicher & Mishne*, 473 N.W.2d 178, 181 (Iowa 1991):

[W]e certainly do not recommend the filing of motions to dismiss in litigation, the viability of which is in any way debatable. Neither do we endorse sustaining such motions, even where the ruling is

eventually affirmed. Both the filing and the sustaining are poor ideas.

The reasons are clear enough. In the first place, in filing a motion to dismiss, a defendant gives away all the facts because in ruling on the motion well-pled facts are assumed to be true. Combined with this venerable rule is a more recent one. Under notice pleading a suit will survive a motion to dismiss whenever a valid recovery can be gleaned from the pleadings.

We recognize the temptation is strong for a defendant to strike a vulnerable petition at the earliest opportunity. Experience has however taught us that vast judicial resources could be saved with the exercise of more professional patience. Under the foregoing rules dismissals of many of the weakest cases must be reversed on appeal. Two appeals often result where one would have sufficed had the defense moved by way of summary judgment, or even by way of defense at trial.

(Citations omitted.)

Because Linda Nelson made the minimum showing necessary at the pleading stage, we reverse the dismissal of her petition for failure to state a claim upon which relief may be granted and remand for further proceedings.

REVERSED AND REMANDED.